IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

OP.No. 1711 of 2002(D)

PETITIONER:

M/S. HARRISONS MALAYALAM LIMITED,
VILLINGDON ISLAND, KOCHI-682 003,
REP. BY ITS COMPANY SECRETARY,
MR. P.A. KRISHNAMOORTHY.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN

RESPONDENTS:

1. JOINT COMMISSIONER OF INCOME TAX
(ASSMT.), SPECIAL RANGE-I, I S PRESS ROAD,
ERNAKULAM.

2. COMMISSIONER OF INCOME TAX,
I S PRESS ROAD, ERNAKULAM.

3. UNION OF INDIA, REP. BY ITS SECRETARY
TO GOVERNMENT, DEPARTMENT OF FINANCE,
MINISTRY OF FINANCE, NEW DELHI.

4. INSPECTING ASSISTANT COMMISSIONER
OF AGRICULTURAL INCOME TAX AND SALES TAX
(SPECIAL) COMMERCIAL TAXES COMPLEX,
PERUMANOOR, ERNAKULAM.

5. COMMISSIONER OF AGRICULTURAL INCOME
TAX, PUBLIC OFFICE BUILDING, THIRUVANANTHAPURAM.

6. STATE OF KERALA, CHIEF SECRETARY TO
GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM.

BY SRI.GEORGE K. GEORGE, SC FOR IT

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/11/2007 ALONG WITH O.P.NO.16732/2001, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.2011/2002 IN O.P.NO.1711/2002

Dismissed

22/11/2007 Sd/- P.R.RAMAN, JUDGE.

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE ASSESSMENT ORDER FOR 1993-94 ISSUED BY THE INSPECTING ASST. COMMISSIONER (SPL.) DTD.28/12/1995 TO THE PETITIONER.

EXT.P2 TRUE COPY OF THE CENTRAL INCOME TAX ASSESSMENT ORDER ISSUED BY THE INCOME TAX DEPT. TO THE PETITIONER DTD. 29/3/96.

EXT.P3 TRUE COPY OF THE NOTICE RECEIVED FOR THE ASSESSMENT 1993-94 FROM THE IST RESPONDENT DTD. 9/11/2000.

P.R.RAMAN, J.

O.P.NOS.1711 OF 2002 &
16732 OF 2001

Dated this the 22nd day of November, 2007

JUDGMENT

Petitioner is an assessee under the Income Tax Act as well as under the Agricultural Income Tax Act. He impugns the notice produced as Ext.P3 in O.P.No.1711/2002, issued by the Joint Commissioner of Income Tax under Section 148 of the Income Tax Act, 1961. The said notice informed the assesssee that the Officer concerned has reason to believe that the income in respect of the petitioner for the assessment year 1993-94 has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961. On the basis of Ext.P3, it cannot be inferred as to how and to what extent and in what manner the income has escaped for the assessment year 1993-94. It is the specific case of the petitioner that Ext.P3 happened to be issued on the assumption that the petitioner has not paid either the Agricultural Income Tax or the Income Tax as the case may be and even assuming that the amount was already paid by the petitioner towards the Agricultural Income Tax, the same is not excludable for the purpose of assessment under the Income Tax Act. The assessee is a Public Limited

Company engaged among other things in the manufacture and sale of Centrifuged Latex, Pale Latex Crepe, Estate Brown Latex etc. In order to market the goods namely, field latex, it has to be either dried or preserved or converted into other products. According to the petitioner, centrifuged latex is creamed latex concentrate which is used in the manufacture of rubber products such as tyre tubes, gloves, foam rubber etc. The petitioner had been returning the entire income from rubber including Centrifuged Latex (Cenex), Pale Latex Crepe (PLC) and Estate Brown Crepe (EBC) as agricultural income. Though he was also assessed to central income tax by the lst respondent, there was no proposal or assessments in respect of income from Centrifuged Latex, Pale Lated Crepe and Estate Brown Crepe as an income chargeable under the Income Tax Act. It was based on the decision of this Court reported in **Kanam Latex Industries Pvt.Ltd.'s case (221 ITR Page 1)** that they proposed to assess income from sale of Cenex, PLC and EBC as business income and issued the notice, Ext.P3, which is impugned in this original petition. Therefore, reopening of the assessment is said to be because of the subsequent decision of this Court holding that such income is referable to business income rather than Agricultural Income. Similar matters came up for consideration before this Court wherein this Court occasioned to consider the circular published in 261 ITR Statute 158 issued by the Central Board of Direct Taxes, New Delhi. It was directed in the said

decision that in respect of assessment years prior to 2002-03 reopening/revision of assessments either under Section 147 or under Section 263 of the Act need not be made, provided the assessees have paid tax on the entire income to the Agricultural Income Tax Department. Possibly, with a view to avoid double taxation the Department itself thought that some ameliorative measures has to be taken and accordingly issued the said circular. Being a circular issued by the Department, they are bound by the same. In such circumstances, if, during the relevant assessment year, the Agricultural Income Tax has been found to have been paid by the petitioner, then the assessment cannot be reopened under Section 147 or 263 of the Act as the case may be, in view of the circular issued by the Department. In such circumstances, direction was issued to the Joint Commissioner of Income Tax to verify this aspect of the matter and to drop the proceedings in case such Agricultural Income Tax has been found to have been paid. That is the direction in O.P.No.7682/2002.

2. In the light of the decision in O.P.No.7682/2002 parties agree and this matter can be disposed of in the same line. Accordingly, I have taken up O.P.No.1711/2002 for consideration. There is a specific averment made by the petitioner in paragraph 5 of the said original petition that he had paid the Agricultural Income Tax at the rate of 65% until the assessment year 1995-96. In the absence of any denial of this fact by filing any separate counter affidavit, the averment so made is

accepted. If so, there arises no occasion for reopening of the assessment as per Ext.P3 notice issued in this case because of the binding circular issued and referred to above. In the circumstances, Ext.P3 is quashed and O.P.No.1711/2002 is allowed.

3. In O.P.No.16732/2001 though the petitioner seeks to quash Ext.P1, in the light of the direction already issued in O.P.No.7682/2002 that the Joint Commissioner of Income Tax to verify whether the petitioner had already paid Agricultural Income Tax for the assessment year in question and if it is found that such tax has been paid, then by virtue of the circular, there cannot be any occasion to reopen the assessment, it is for the Joint Commissioner of Income Tax to consider this aspect of the matter and pass appropriate orders. It is open to the petitioner to produce necessary evidence in this regard.

Accordingly, O.P.No.16732/2001 is disposed of with a direction to the Joint Commissioner of Income Tax to verify this aspect of the matter and to exclude the amount of tax already paid by the petitioner, and grant necessary relief in this regard.

P.R.RAMAN,
Judge.

kcv.